

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

EDSON TORO

v.

C.A. No. 05- 455 T

STEPHEN REGINE, Assistant Attorney General,
PATRICIA COYNE-FAGUE, and **A.T. WALL**,
Director, Rhode Island Department of Corrections.

ORDER

Edson Toro, *pro se*, an inmate incarcerated at the Rhode Island Department of Corrections, filed a Complaint pursuant to 42 U.S.C. § 1983 alleging that he was being confined beyond the expiration date of his criminal sentence. Mr. Toro avers that his sentence expired on August 1, 2005, and that the Rhode Island Department of Corrections, after consulting with Mr. Toro's criminal prosecutor, "recalculated" the term of confinement to exclude certain good-time credit. Mr. Toro avers that his sentence now expires February 10, 2006.

Accordingly, this Court construed the instant matter as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and/or 28 U.S.C. § 2254 and ordered the Attorney General of the State of Rhode Island to respond expeditiously to the application. The Attorney General complied, and moved to dismiss the petition. Mr. Toro has objected to the motion to dismiss and indicates that he does not want this Court to treat the instant matter as a petition for a writ of habeas corpus, but rather, a Complaint filed pursuant to 42 U.S.C. § 1983. Therefore, the Court hereby considers this matter as a 42 U.S.C. § 1983 action. The Clerk of Court shall classify it as such.

Furthermore, **IT IS HEREBY ORDERED:**

1. The designation of the Attorney General as a party-respondent is hereby **VACATED**.
2. The plaintiff, Edson Toro, is hereby **ORDERED** to serve the named defendants pursuant to Fed.R.Civ.P. 4.

IT IS SO ORDERED.



Jacob Hagopian
Senior United States Magistrate Judge
December 1, 2005